Filed 6/22/09 P. v. Bridges CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. LESLIE LAMARK BRIDGES, Defendant and Appellant.	E045827 (Super.Ct.No. RIF131768) OPINION

APPEAL from the Superior Court of Riverside County. Paul E. Zellerbach, Judge. Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, and Rhonda Cartwright-Ladendorf and Stacy Tyler, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant Leslie Lamark Bridges guilty of possession of cocaine base for sale. (Health & Saf. Code, § 11351.5.) Defendant admitted that he had previously been convicted of selling a controlled substance (Health & Saf. Code,

§ 11370.2, subd. (a)) and that he had sustained four prior prison terms (Pen. Code, § 667.5, subd. (b)). He was sentenced to a total term of nine years in state prison. On appeal, defendant contends (1) there was insufficient evidence to sustain his conviction; and (2) the prosecutor committed prejudicial misconduct while cross-examining him. We reject these contentions and affirm the judgment.

I

FACTUAL BACKGROUND

On August 5, 2006, Riverside Police Officer David Reeves, who had been an officer for over six years and who had considerable experience and knowledge in cases involving controlled substances, was on patrol duty with his partner in the Casa Blanca area of Riverside, known for frequent drug use and sales, gang activity, and violence. The officers were interested in a particular house in the neighborhood because the activity there had been the cause of many citizen complaints. At about 5:00 p.m., the officers saw a group of men standing on the sidewalk in front of the house. As the officers approached the house, the men dispersed. One man, identified as defendant, caught Officer Reeves's attention because he was acting nervous and suspicious. Officer Reeves exited his patrol vehicle, approached defendant, and asked to speak with him.

During a patdown search of defendant, Officer Reeves found a plastic bag containing 24 separate "rocks" of cocaine, later determined to weigh 6.6 grams. The total street value of the rock cocaine was about $200 to $240. Defendant was also carrying

$191 in cash and a cellular telephone. Defendant was arrested and taken to the police station.

Once at the police station, Officer Reeves noticed defendant was sweating profusely. This did not surprise the officer, as the temperature was well over 100 degrees, and the officer was sweating as well. As defendant told the officer he was about to pass out, the officer summoned medical assistance. Defendant was taken to a hospital before the officer could conduct tests to determine whether defendant was actually under the influence of a drug. Officer Reeves opined that defendant's condition was not the result of cocaine intoxication, as defendant did not appear to exhibit any other symptoms associated with being under the influence of cocaine apart from the sweating.

Detective Ronald Kipp, a 27-year veteran of the Riverside Police Department who has considerable experience and knowledge in investigating narcotics crimes, including extensive training in possession and sale of controlled substances, testified that defendant possessed the cocaine base for sale. The detective explained that it is "[v]ery rare[]" to find more than a few (five or six) doses of cocaine on a person who is strictly a user and not a seller. The detective further noted that it is also unusual for someone who is merely a user to have much, if any, money, because the drug is extremely addictive, and users generally buy another dose of the drug as soon as they can afford it. The detective also explained that the amount of cocaine base defendant was carrying indicated defendant initially had possessed a larger amount, possibly a half ounce, and that the amount of cocaine base defendant was carrying was enough for at least 72 and as many as 120

individual doses. Detective Kipp also stated that even a habitual user generally uses no more than a gram a day and that sellers of cocaine base on the scale indicated by the amount defendant possessed usually do not use the drug habitually because it is bad for business. The detective further noted the absence of "pay-owe sheets" or a scale did not militate against defendant being a seller because to avoid prosecution drug dealers rarely carrying such items nowadays.

Felicia Luckey, a convicted felon of various crimes including drug-related crimes, receiving stolen property, and possessing weapons, testified on behalf of the defense. Luckey was the owner of the house where defendant was arrested and which was nefarious for drug activity. She admitted that the house had become a "drug house" at one point.

Luckey stated that she had hired defendant to work around the house and that on the day of the incident, defendant had worked in the backyard doing manual labor. In return, she had paid him $50 in small bills. Luckey, who explained that she had been around drugs her whole life and was aware of symptoms exhibited by people under the influence of drugs, opined that defendant was under the influence of cocaine, as he was perspiring heavily and seemed unable to focus on her conversation. She claimed that after defendant was arrested, she found a pipe used for smoking cocaine in her backyard, which she believed belonged to defendant and which she had thrown away.

Defendant testified on his own behalf. He was 44 years old by the time of trial and said he had been abusing drugs since the age of 13 and cocaine base since he was

about 23. He explained that he was heavily using the drug by the time of his arrest and claimed that he had possessed the cocaine base for personal use. Defendant further stated that he had obtained the money from various girlfriends to buy drugs and that the cocaine base he was carrying for his own use had been bought with the money from these women. Defendant denied selling the drug. He characterized himself as a "drug addict," who "smoke[d] everything [he] g[ot]." He pointed out that roughly half his teeth had fallen out because of his heavy drug use and that he had to use substantial quantities of the drug to feel any effect. He further noted that due to his tolerance after using the drug for so many years, apart from the sweating, he did not usually show many symptoms of intoxication.

II

DISCUSSION

A. *Insufficient Evidence*

Defendant contends there was insufficient evidence to sustain his conviction for possession of cocaine base for sale. We disagree.

"We often address claims of insufficient evidence, and the standard of review is settled. 'A reviewing court faced with such a claim determines "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." [Citations.] We examine the record to determine "whether it shows evidence that is reasonable, credible and of solid value from which a rational trier of fact could find the defendant

guilty beyond a reasonable doubt." [Citation.] Further, "the appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence."' [Citation.]" (*People v. Moon* (2005) 37 Cal.4th 1, 22.)

"In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. [Citation.]" (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) "'Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.' [Citation.]" (*People v. Guerra* (2006) 37 Cal.4th 1067, 1141, quoting *People v. Maury* (2003) 30 Cal.4th 342, 403.)

Applying these principles to the present case, we conclude that substantial evidence supports defendant's conviction for possession of cocaine base for the purpose of sale.

Possession of narcotics for sale "requires proof the defendant possessed the contraband with the intent of selling it and with knowledge of both its presence and illegal character." (*People v. Meza* (1995) 38 Cal.App.4th 1741, 1745-1746; see also *People v. Parra* (1999) 70 Cal.App.4th 222, 225-226.) The "[i]ntent to sell may be

established by circumstantial evidence." (*People v. Harris* (2000) 83 Cal.App.4th 371, 374.)

The amounts of cocaine base and money found on defendant's person, along with the cellular telephone and his demeanor when he was stopped, and the testimonies of Officer Reeves and Detective Kipp are sufficient to establish the requisite intent for possession for sale of cocaine base. Officer Reeves testified that defendant appeared scared and nervous and tried to avoid him and his partner when they approached. Shortly thereafter, Officer Reeves discovered 24 separate pieces of rock cocaine, about $191 in cash, and a cellular telephone on defendant's person. The drug weighed about 6.6 grams, and was worth around $240. Detective Kipp, an expert in narcotics investigations, testified that this amount represented at least 72 doses of the drug. The detective explained that the amount defendant had on his person was a quantity far beyond which a user, including a heavy user as defendant claimed to be, as opposed to a seller, would have. Detective Kipp opined that based on these circumstances the cocaine base was intended for sale.

Courts allow experienced narcotics officers to give an opinion that drugs possessed by a defendant are for sale based upon the quantity, packaging, and other factors. (*People v. Harris*, *supra*, 83 Cal.App.4th at pp. 374-375; *People v. Carter* (1997) 55 Cal.App.4th 1376, 1378 ["'experienced officers may give their opinion that the narcotics are held for purposes of sale based upon such matters as the quantity, packaging and normal use of an individual'"].) Detective Kipp's expert opinion, which was based

on the quantity of cocaine base found and the normal uses of individuals, here was sufficient to establish the requisite intent.

Further, the fact that there was also evidence defendant possessed the cocaine base for personal use and did not have some items usually associated with sellers does not negate the intent element. Sellers are often also users. Further, the fact there was some slight evidence from which a jury could conclude defendant possessed the cocaine base for personal use is irrelevant to our review of whether substantial evidence supports the conviction. "'"[T]he opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment."' [Citations.]" (*People v. Bean* (1988) 46 Cal.3d 919, 933; see also *People v. Stanley* (1995) 10 Cal.4th 764, 793.)

B. *Prosecutorial Misconduct*

While the prosecutor was cross-examining defendant, the following colloquy occurred:

"Q. Okay. So when [the criminalist] was here earlier and told us that, you know, he checked it out and weighed it without the packaging, that wasn't right?

"A. That's what it says on that paper. But what's in that bag, that's not seven grams of dope.

"Q. Okay. So Mr. Khan wasn't correct?

"A. He testified that what was on that paper and what he got was seven grams. But what's in that bag is not seven grams.

"Q. Well, this bag that we see here, is that not the same drugs you had that day?

"A. They are the same drugs. Yes, they are. And that is the bag, is what I'm saying. [¶] . . . [¶]

"Q. So that's not almost seven grams. But you think Mr. Khan was still telling the truth?

"A. Well, he testified to what he—you know, his performance on the drugs. But, you know, what he says and what's on the paper, you know, it's two different things."

Defendant complains that the prosecutor committed misconduct as it "inappropriately compelled [defendant] to either call the expert a liar or to impermissibly vouch for his character."

Defendant concedes that trial defense counsel failed to object to the questioning forming the basis of his claim of prosecutorial misconduct. The failure to object to a prosecutor's remarks or questions regarding a witness's credibility as misconduct waives objection on appeal. (*People v. Fierro* (1991) 1 Cal.4th 173, 211; *People v. Frye* (1998) 18 Cal.4th 894, 969-970.)

Even assuming trial defense counsel had preserved the objection and to forestall his ineffective assistance of counsel claim, we find no error.

Under federal law, a prosecutor's improper remarks or questions constitute misconduct if they "'so infected the trial with unfairness as to make the resulting conviction a denial of due process.' [Citation.]" (*Darden v. Wainwright* (1986) 477 U.S. 168, 181.) "'Conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct under state law only if it involves '"'the use of

deceptive or reprehensible methods to attempt to persuade either the court or the jury."'" [Citation.]' [Citation.]" (*People v. Hill* (1998) 17 Cal.4th 800, 819.) "Misconduct that infringes upon a defendant's [federal] constitutional rights mandates reversal of the conviction unless the reviewing court determines beyond a reasonable doubt that it did not affect the jury's verdict. [Citations.] A violation of state law only is cause for reversal when it is reasonably probable that a result more favorable to the defendant would have occurred had the district attorney refrained from the untoward [conduct]. [Citations.]" (*People v. Pigage* (2003) 112 Cal.App.4th 1359, 1375.)

The propriety of "were they lying" questions was recently addressed by our Supreme Court in *People v. Chatman* (2006) 38 Cal.4th 344 (*Chatman*). In *Chatman*, the prosecutor repeatedly asked the defendant whether certain witnesses were lying and whether they had a reason to lie. (*Id*. at pp. 378-379.) On appeal the defendant claimed "the questions 'invaded the province of the jury,' elicited improper lay opinion about the veracity of witnesses, and constituted misconduct by intentionally eliciting inadmissible testimony."[1] (*Id*. at p. 379.) In rejecting the defendant's arguments, the Supreme Court provided general guidelines regarding "were they lying" questions. (*Id*. at pp. 380-383.) Such queries are "legitimate inquiry" if they call for testimony that would properly help the jury to determine credibility. (*Id*. at pp. at p. 383.) A defendant's testimony may assist a jury because a "defendant who is a percipient witness to the events at issue" or

---

[1] Although the *Chatman* court questioned "whether this issue is properly considered one of misconduct" (*Chatman, supra*, 38 Cal.4th at p. 379) as opposed to "the erroneous admission of evidence," it concluded the "defendant's argument [was] essentially identical under either characterization." (*Id*. at p. 380.)

who "knows the other witnesses well" may "be able to provide insight on whether witnesses . . . are intentionally lying or are merely mistaken." (*Id.* at p. 382.)

For example, in *Chatman*, the prosecutor properly asked the defendant whether he "knew of facts that would show a witness's testimony might be inaccurate or mistaken, or whether he knew of any bias, interest, or motive for a witness to be untruthful." (*Chatman, supra,* 38 Cal.4th at p. 383.) It was also permissible for the prosecutor to clarify the defendant's "own position" on whether his testimony differed from that of other witnesses because "he had a better vantage point from which to observe an event . . . , [because] his memory [was] superior to one who was inattentive," or because the other witnesses were lying. (*Ibid.*; see also *People v. Guerra*, *supra*, 37 Cal.4th at p. 1126 [prosecutor does not commit misconduct by assuming witnesses "might have been lying and [seeking] possible explanations for their false testimony from defendant"]; *People v. Tafoya* (2007) 42 Cal.4th 147, 179 ["by choosing to testify, defendant put his own veracity in issue," and the "prosecution's [were they lying] questions allowed defendant to clarify his position and to explain why [a codefendant and an eyewitness] might have a reason to testify falsely"].)

On the other hand, "were they lying" queries are improper if they are merely argumentative. (*Chatman, supra,* 38 Cal.4th at pp. 381, 384.) In *Chatman*, the prosecutor asked the defendant how the safe at a store was opened. (*Id.* at p. 379.) The defendant replied that "he could not say; he never touched the safe," eliciting the prosecutor's query, "'Well, is the safe lying about you?'" (*Ibid.*) The Supreme Court held the question of whether an inanimate object was "lying" was argumentative,

defining argumentative inquiry as "speech to the jury masquerading as a question" that "does not seek to elicit relevant, competent testimony, or often any testimony at all." (*Id*. at p. 384.)

Equally improper are "were they lying" questions calling for "irrelevant or speculative" testimony (*Chatman, supra*, 38 Cal.4th at p. 384), such as the prosecutor's queries in *People v. Zambrano* (2004) 124 Cal.App.4th 228. There, undercover officers testified they arrested the defendant after he sold them cocaine. (*Id*. at p. 233.) The defendant testified to a totally different version of events, asserting an officer simply "walked up to him, said something he did not understand, put a gun to his neck, threw him on the ground, and handcuffed him." (*Ibid*.) The Court of Appeal held "the prosecutor's 'were they lying' questions were inadmissible because they were irrelevant to any issue in [the] case," since the "questions did not clarify defendant's prior testimony" and "merely forced defendant to opine, without foundation, that the officers were liars." (*Id*. at pp. 240-241.) The court concluded, "The questions served no purpose other than to elicit defendant's inadmissible lay opinion concerning the officers' veracity." (*Id*. at p. 241.) *Chatman* approved the *Zambrano* holding and stated the *Zambrano* defendant, as "a stranger to the officers, had no basis for insight into their bias, interest, or motive to be untruthful" or for attributing the differences in testimony "to mistake or faulty recall." (*Chatman, supra*, 38 Cal.4th at p. 381.)

We find the prosecutor's questions here were proper. Defendant's testimony was in conflict as to the amount of drugs that were confiscated. The prosecutor was merely attempting to determine whether the 6.6-gram measurement was inaccurate after

defendant spontaneously blurted that the drugs found were not between six and seven grams. The prosecutor twice asked defendant if he was suggesting whether the measurement was erroneous before he asked defendant whether defendant thought the criminalist was testifying truthfully about his findings. Since defendant's answer of how much cocaine base was actually found placed the amount in dispute, the prosecutor could properly ask defendant questions to determine if the criminalist's finding was mistaken. Defendant was a percipient witness to how much cocaine base he had in his possession, and the questions would have elicited relevant testimony to assist the jury in making a credibility determination between defendant and the criminalist. Defendant's testimony assisted the jury in determining the accuracy of the criminalist's observations or findings. Essentially, defendant adopted the position that "he had a better vantage point from which to observe an event, or that his memory [was] superior to one who was inattentive . . . ." (*Chatman, supra,* 38 Cal.4th at p. 383.) This testimony helped the jury assess the relative credibility of defendant compared to that of the criminalist. The testimony was a proper aid to the jury in deciding whom to believe. By expressly stating there was not six to seven grams of cocaine in the bag on cross-examination, defendant placed the reliability of the statements and credibility of the testimony in dispute.

There was no evidence to suggest that the prosecutor used the "were they lying" questions to berate defendant before the jury or to force him to call the witness a liar in an attempt to inflame the passions of the jury. (See *People v. Zambrano, supra,* 124 Cal.App.4th at p. 242.)

Even if the prosecutor's question can be deemed "vouching" as defendant asserts, impermissible "vouching" may occur when a prosecutor places the government's prestige behind a witness through personal assurances of the witness's veracity, or suggests that information not presented to the jury supports the witness's testimony. It is improper for a prosecutor to argue that he or she has superior knowledge of sources not available to the jury. (*People v. Williams* (1997) 16 Cal.4th 153, 257.) "Prosecutorial assurances, based on the record, regarding the apparent honesty or reliability of prosecution witnesses, cannot be characterized as improper 'vouching,' which usually involves an attempt to bolster a witness by references to facts outside the record." (*People v. Medina* (1995) 11 Cal.4th 694, 757, italics omitted.)

Here the prosecutor did not vouch for the criminalist's credibility by placing before the jury facts that were inaccurate, outside the record, or known personally to the prosecutor. Nor did the prosecutor attempt to compel defendant to either call the expert a liar or to have defendant vouch for his character. We find no merit to defendant's claim of prosecutorial misconduct.

Even if we assume, for the sake of argument, that the prosecutor committed misconduct based on essentially the one improper question, the misconduct was relatively benign in terms of its likely impact on the jury's verdict. Even considered cumulatively, the effect of any misconduct here merely gave a slight additional emphasis to the obvious disparity between the strength of the prosecution's case and the weakness of the defense case. (See, e.g., *People v. Medina*, *supra*, 11 Cal.4th 694, 757, 759-761 [prosecutor's improper vouching for witnesses and his appeal to passions of the jury were misconduct

but were not prejudicial because none of the misconduct was serious enough, even in the aggregate, to prejudice defendant]; *People v. Zambrano*, *supra*, 124 Cal.App.4th at p. 243 [prosecutor's repeated "were they lying" questions were misconduct but were not prejudicial in light of defendant having already destroyed his own credibility with patently unreasonable testimony].)

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
Acting P. J.

We concur:

GAUT
J.

MILLER
J.